

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DON C. LIVINGSTON,
Petitioner,
v.
PATRICK COVELLO, Warden,
Respondent.

No. 2:20-cv-0047 KJM AC P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 2, 2020, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within thirty days. ECF No. 25. Petitioner has filed objections to the findings and recommendations. ECF No. 30; *see also* ECF No. 32 (clarifying that document styled a “Reply and Exhibits” is properly construed as objections).

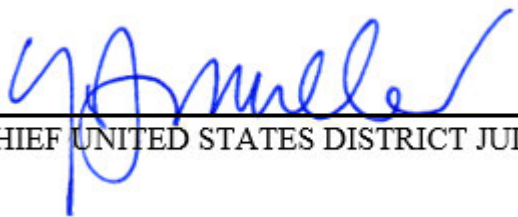
In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis. In particular, the court notes the magistrate judge’s careful evaluation of the record with respect to

petitioner's mental health and whether it impeded his ability to present timely legal filings as relevant to his case; the court also notes the magistrate judge's faithful identification of the law and analysis with respect to the facts of petitioner's case.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed December 2, 2020, ECF No. 25, are adopted in full;
2. Respondent's motion to dismiss, ECF No. 12, is granted;
3. This action is dismissed with prejudice because untimely filed; and
4. The court declines to issue the certificate of appealability referenced in 28 U.S.C. § 2253.

DATED: March 31, 2021.


CHIEF UNITED STATES DISTRICT JUDGE